

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**APRIL L MONTGOMERY**  
Claimant

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**APPEAL 21A-UI-25336-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/08/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant/appellant, April L. Montgomery, filed an appeal from the November 14, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated claimant was ineligible for regular state benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2022. The hearing was held together with Appeal 25337-JC-T. The claimant participated. The employer/respondent, Thomas L. Cardella & Associates Inc., did not participate. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant able to work and available for work effective November 8, 2020?  
Was the claimant voluntarily unemployed due to a requested leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant works for this employer as a full-time customer service representative. She earned \$14.70 per hour for purposes of this appeal. Claimant filed her claim for unemployment insurance benefits with an effective date of November 8, 2020. Her weekly benefit amount was \$383.00 per week.

Claimant made weekly continued claims for unemployment insurance benefits for the period of November 8, 2020 and December 12, 2020 when her child’s school closed and went to remote only learning. Claimant did not have childcare and stayed with her child rather than perform work. Employer agreed to the arrangement.

Claimant reported \$443.00 in wages for the week ending November 8, 2020. Claimant reported \$114.00 in vacation applied to her time off for the week ending November 21, 2020. Claimant reported no wages for the period of November 22, 2020 through December 12, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work November 8, 2020 through December 5, 2020.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871—24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

*For the week ending November 14, 2020: Claimant performed work to a degree that removed her from the labor market, and therefore would meet the eligibility requirements.*

*For the weeks of November 15, 2020 through December 12, 2020:*

The administrative law judge recognizes the claimant has filed her current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. However, the claimant informed the employer she was unable to work due to her child's school being closed for in-person learning, and not having childcare. The employer agreed to allow the claimant time off for that reason. The claimant is considered to be on a leave of absence and is not available for work, according to Iowa law. Therefore, the claimant is not eligible for *regular, state-funded unemployment insurance benefits*.

**DECISION:**

The unemployment insurance decision dated November 14, 2021 (reference 01) is affirmed. The claimant was not able and available for work November 8, 2020 through December 12, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

February 7, 2022

Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020 and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. **The authorization code is 1 , the pin number you used for the hearing.**

If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.